

Office of the Secretary, HUD

§ 17.103

§ 17.100 Scope.

(a) The standards set forth in §§ 17.100 through 17.118 are the Department's procedures for the collection of money owed to the government by means of administrative offset. These procedures apply to the collection of debts as authorized by common law, by 31 U.S.C. 3716, or under other statutory authority. These procedures will not be used when a statute provides its own collection procedure, for procedures for grant reduction as a remedial action in grant programs (including the CDBG program), when explicitly prohibited by a statute, or when the United States has a judgment against the debtor. Unless otherwise provided for by statute, these procedures do not apply to an agency of the United States, a State government, or unit of general local government. In addition, these procedures do not apply to debts arising under the Internal Revenue Code of 1954 (26 U.S.C. 1-9602), the Social Security Act (42 U.S.C. 301-1397f), or the tariff laws of the United States.

(b) The Secretary will use administrative offset to collect claims which are certain in amount in every instance in which collection is determined to be feasible and not prohibited by law. The Secretary will determine feasibility on a case-by-case basis, exercising sound discretion. In determining feasibility the Secretary will consider:

- (1) The debtor's financial condition;
- (2) Whether offset would substantially interfere with or defeat the purposes of the program authorizing the payments against which offset is contemplated; and
- (3) Whether offset best serves to further and protect all of the interests of the United States.

§ 17.101 Coordinating administrative offset with another Federal agency.

(a) *When HUD is owed the debt.* When the Department is owed a debt, but another Federal agency is responsible for making the payment to the debtor against which administrative offset is sought, the other agency shall not initiate the requested administrative offset until the Department provides the agency with a written certification that the debtor owes the Department a

debt (including the amount and basis of the debt and the due date of the payment) and that the Department has complied with these regulations.

(b) *When another agency is owed the debt.* The Department may administratively offset money it owes to a person who is indebted to another agency if requested to do so by that agency. Such a request must be accompanied by a certification by the requesting agency that the person owes the debt (including the amount) and that the person has been given the procedural rights required by 31 U.S.C. 3716 and 4 CFR part 102.

§ 17.102 Notice requirements before offset.

Except as provided in § 17.103, deductions will be made only after the Secretary makes a determination that an amount is owed and past due and provides the debtor with a minimum of 30 calendar days written notice. This Notice of Intent to Collect by Administrative Offset (Notice of Intent) will state:

(a) The nature and amount of the debt;

(b) That the Secretary intends to collect the debt by administrative offset until the debt and all accumulated interest and other charges are paid in full;

(c) That the debtor has a right to obtain review within the Department of the Secretary's initial determination of indebtedness (see § 17.104);

(d) That the debtor has a right to inspect and copy Department records related to the debt, as determined by the Secretary, and will be informed as to where and when the inspection and copying can be done after the Department receives notice from the debtor that inspection and copying are requested. (see § 17.105); and

(e) That the debtor may enter into a written agreement with the Secretary to repay the debt, so long as the terms of the repayment agreement proposed by the debtor are agreeable to the Secretary (see § 17.106).

§ 17.103 Exceptions to notice requirements.

(a) In cases where the notice requirements specified in § 17.102 already have

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been provided to the debtor in connection with the same debt under some other proceeding, the Secretary is not required to duplicate those requirements before effecting administrative offset.

(b) The Secretary may effect administrative offset against a payment to be made to a debtor before completion of the procedures required by § 17.102 if (1) failure to make the offset would substantially prejudice the Government's ability to collect the debt, and (2) the time before the payment is to be made does not reasonably permit the completion of those procedures. Such prior offset must be followed promptly by the completion of those procedures. Amounts recovered by offset but later found not to be owed to the Secretary will be refunded promptly.

§ 17.104 Review within the Department of a determination of indebtedness.

(a) *Notification by debtor.* A debtor who receives a Notice of Intent has the right to request Departmental review of the determination of indebtedness. To exercise this right, the debtor must send a letter requesting review to the Secretary. The letter must explain why the debtor seeks review and must be received by the Secretary within 20 calendar days of the date of the Department's Notice of Intent.

(b) *Secretary's response.* In response to a timely request for review of the initial determination of indebtedness, the Secretary will notify the debtor whether review will be by review of the record or by hearing. The notice to the debtor will include the procedures used for reviewing the record or will include information on the date, location and procedures to be used if review is by a hearing.

§ 17.105 Review of departmental records related to the debt.

(a) *Notification by debtor.* A debtor who intends to inspect or copy Departmental records related to the debt as determined by the Secretary must send a letter to the Secretary stating his or her intention. The letter must be received by the Secretary within 20 calendar days of the date of the Department's Notice of Intent.

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(b) *Secretary's response.* In response to timely notification by the debtor as described in paragraph (a) of this section, the Secretary will notify the debtor of the location and time when the debtor may inspect or copy Department records related to the debt.

§ 17.106 Written agreement to repay debt as alternative to administrative offset.

(a) *Notification by debtor.* The debtor may, in response to a Notice of Intent, propose a written agreement to repay the debt as an alternative to administrative offset. Any debtor who wishes to do this must submit a proposed written agreement to repay the debt. This proposed written agreement must be received by the Secretary within 20 calendar days of the date of the Department's Notice of Intent.

(b) *Secretary's response.* In response to timely notification by the debtor as described in paragraph (a) of this section, the Secretary will notify the debtor whether the debtor's proposed written agreement for repayment is acceptable. It is within the Secretary's discretion to accept a repayment agreement instead of proceeding by offset. In making this determination the Secretary will balance the Department's interest in collecting the debt against hardship to the debtor. If the debt is delinquent and the debtor has not disputed its existence or amount, the Secretary will accept a repayment agreement instead of offset only if the debtor is able to establish that offset would result in undue financial hardship or would be against equity and good conscience.

§ 17.107 Stay of offset.

If the debtor timely notifies the Secretary that he or she is exercising a right described in § 17.104 or § 17.106, the offset will be stayed until the Secretary either makes a determination concerning the debtor's proposal to repay the debt or issues a written decision following review of the record or, where appropriate, a hearing. However, interest continues to run during any stay.